

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No. 23-cv-00217-KDB-SCR**

**HUBERT SIMPSON, individually,
and on behalf of all others similarly
situated,**

Plaintiff,

V.

**CAROTHERS HOLDING
COMPANY, LLC, *et al.*,**

Defendants.

**DEFENDANT CAROTHERS HOLDING
COMPANY, LLC'S MOTION TO DISMISS
THE COMPLAINT AND MOTION TO
STRIKE OR DISMISS CLASS
ALLEGATIONS**

Defendant, Carothers Holding Company, LLC (“Carothers”), pursuant to Federal Rules of Civil Procedure 8, 9(b), 10, 12(b)(6), 12(f), and 23 hereby files its Motion to Dismiss Plaintiff’s Complaint and Motion to Strike or Dismiss Class Allegations, and as set forth in its supporting Memorandum of Law in support thereof, moves to dismiss Plaintiff’s Complaint, with prejudice, and to strike or dismiss Plaintiff’s class allegations, with prejudice, on the following grounds:

1. Plaintiff's Complaint is a quintessential shotgun pleading violating basic pleading rules under Federal Rules of Civil Procedure 8 and 10, and otherwise fails to state a claim under Rule 12(b)(6) because Plaintiff fails to articulate his claims with sufficient clarity to allow Carothers to frame a responsive pleading and in which it is virtually impossible to know which allegations of fact are intended to support which claims for relief. In relevant part, Plaintiff: (a) comingles all Defendants and fails to identify any individual Defendant's role or relationship to the other in connection with any of his claims; (b) is vague, conclusory, complex, and contains immaterial allegations not clearly connected to any particular cause of action; and (c) adopts and reincorporates all prior allegations and all counts into each count.

2. Plaintiff fails to plausibly allege that he is a proper party under North Carolina law to bring causes of action on behalf of unidentified deceased relatives or other putative class plaintiffs in connection with claims that must be brought by an authorized personal representative or next of kin under North Carolina law.

3. Plaintiff's claims, premised on fraud, fail to satisfy Rule 9(b) pleading requirements.

4. Plaintiff fails to state a claim for breach of contract, negligence, trespass, negligent infliction of emotional distress, intentional infliction of emotional distress, breach of third-party beneficiary contract, RICO under N.C.G.S. Chapter 75-D1, or specific performance and therefore his claims should be dismissed under Rule 12(b)(6).

5. Regardless of the numerous pleading deficiencies set forth above, Plaintiff's claims against Carothers for emotional distress or related damages are barred by the applicable 10-year statute of repose because Carothers sold York Cemetery in 2007. Therefore, Plaintiff's claims against Carothers should be dismissed with prejudice.

6. Finally, Plaintiff's claims cannot meet the requirements of Rule 23 including commonality, typicality, adequacy, or predominance requirements to state a claim for class relief and these issues cannot be cured. Therefore, his putative class claims should be dismissed or stricken with prejudice and without leave to amend.

7. By filing this Motion, Carothers expressly reserves and does not waive any potential defenses under any applicable arbitration agreements, waivers, or limitations of liability that may apply in any applicable contracts at issue in the Class Complaint, which given its generic and overbroad pleading as set forth in this Motion, fails to adequately allege which specific contracts are at issue.

WHEREFORE, Defendant Carothers Holding Company, LLC respectfully requests that this Court grant its Motion to Dismiss and dismiss Plaintiff's Complaint and all class allegations in their entirety, with prejudice, and such further relief this Court deems just and proper.

Date: April 21, 2023

Respectfully Submitted,

/s/ William M. Butler

Anthony T. Lathrop

N.C. Bar No. 15941

William M. Butler

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